



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. September 25, 1991

NOTICE OF POSTPONEMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-89-455 ENGINEERS & IRON WORKERS
Item #5, Cycle I NE/s Reisterstown Road, 1150' NW
1989 of c/l Rosewood La., cor NW/s proposed
Owings Mills Boulevard
(For the purpose of 4th Election District
submitting an Amended 3rd Councilmanic District
Petition) Petitioner

Reclassification from ML-IM to B.R.

which had been scheduled for hearing on Wednesday, October 2, 1991 for the purpose of accepting an Amended Petition has been POSTPONED at the request of Counsel for Petitioner due to scheduling conflict and will not be reset until such time as requested by Petitioner.

cc: S. Eric DiNenna, Esquire Counsel for Petitioner
Engineers & Iron Workers Petitioner

David J. Preller, Esquire
Geraldine Klauber, Esquire
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services - out per Paula 9/30/91
Lawrence E. Schmidt
Timothy H. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director
Zoning Administration

Kathleen C. Weidenhammer
Administrative Assistant



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cc: S. Eric DiNenna, Esquire Counsel for Petitioner
Engineers & Iron Workers Petitioner

David J. Preller, Esquire
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Administrative Assistant

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 2, 1989

COUNTY OFFICE BLDG.
111 W. CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

000

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

S. Eric DiNenna, Esquire
P.O. Box 10508
Towson, MD 21285-0508

RE: Item No. 5
Case No. R89-455
Petitioner: Engineers & Iron
Workers
Reclassification Petition

Dear Mr. DiNenna:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the October-April reclassification cycle (Cycle V). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office on or before October 26, 1989. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.

Page 2

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 887-3391 or the commenting agency.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Engineers & Iron Workers
5907 Harford Road
Baltimore, MD 21214

cc:

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3553
J. Robert Haines
Zoning Commissioner



Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this
1st day of March, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Engineers & Iron Workers, et al

Petitioner's Attorney: S. Eric DiNenna



Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

April 24, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Attn: Mr. James Dyer

Re: Baltimore County
Zoning Reclassification
Petition
Engineers & Iron Workers
R89-455; October 11, 1989
N/S Reisterstown Road
(MD 140) N/W/S of
Proposed Owings Mills
Boulevard
(Item #5-Cycle I)

Dear Mr. Haines:

After reviewing the submittals of the Engineer & Iron Workers property, we find the plan must be revised to show a future 50' right of way on Reisterstown Road.

If you have any questions, please contact Larry Brocato at 333-1350.

Very truly yours,

Gregory J. Mills, Jr.
Gregory J. Mills, Jr., Chief
Engineering Access Permits
Division

LB:maw

cc: Harris, Smariga, Matz, Inc.
Mr. E. DiNenna, Esq.
Mr. J. Ogilvie

RECEIVED
APR 24 1989
ZONING OFFICE

My telephone number is (301) 333-1350

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4509

Paul H. Reincke
Chief

William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: Engineers & Iron Workers

Location: NE/S Reisterstown Rd., 1150' NW of centerline Rosewood La.
also cor NW/S proposed Owings Mills Blvd.
Item No.: Five (5) Zoning Agenda: 4/89-10/89

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," edition _____ prior to occupancy.
- () 6. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Paul H. Reincke* 4-14-89 Noted and Approved: *William Hackett*
Planning Bureau Fire Prevention Bureau
Special Inspection Division

/s/

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 408
Towson, Maryland 21204
(301) 887-3554



Dennis F. Rasmussen
County Executive

May 9, 1989

Mr. William Hackett
Chairman, Board of Appeals
County Office Building
Towson, Maryland 21204

Zoning Reclassification Cycle 1
Item No. 5

April - October, 1989

Property Owner:
Case No./Hearing Date:
Location:

Engineers & Iron Workers
R89-455; October 11, 1989
N.E./S. Reisterstown Road
1150' N.W. of Centerline Rosewood
Lane
M.L. - I.M.
4th
Councilmanic District:
3rd
10
B.R.

Dear Mr. Hackett:

The existing M.L. - I.M. zoning for this site can be expected to generate approximately 515 trips per day. The proposed B.R. zoning can be expected to generate approximately 5,000 trips per day.

Access to this site may be a problem, due to the grade of Reisterstown Road in this area, and the sight distance problems caused by the R.R. bridge to the north of the site.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

August 17, 1989

S. Eric DiNenna, Esquire
DINENNA, MANN & BRESCHI
P.O. Box 10508
Towson, MD 21285-0508

RE: Case No. R-89-455
Engineers & Iron Workers, Petitioners

Dear Mr. DiNenna:

Your request for postponement of the subject case which is set for hearing on October 11, 1989 is herewith denied. This case involves a Petition for Reclassification, which has been advertised, and notices have been sent to all parties.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

WTH:kcw

cc: Phyllis Cole Friedman, Esquire

Baltimore County Government
Office of Planning and Zoning

401 Bosley Avenue
Towson, MD 21204

9/1/91 1536-92
70 CL AT

887-3211
Fax 887-5862

September 11, 1991

S. Eric DiNenna
Mercantile - Towson Building
409 Washington Avenue, Suite 600
Towson, Maryland 21204

RE: Claridge Towers/Engineers &
Iron Workers

Dear Mr. DiNenna,

Please be advised that the two properties referenced in your letters of August 19, 1991 have become part of the 1992 Comprehensive Zoning Map Process since neither case was adjudicated prior to August 1, 1991. The issue numbers for the two Petitions (R-89-455 and CR-90-409-SPHA) are 3.002 and 3.005, respectively.

In response to your letter of September 4, 1991 (see attached) regarding the Engineers & Iron Workers property located in Owings Mills, this office feels that it is imperative that a Petition be amended when there is a change in ownership of a site subject to a reclassification request. Notification appears particularly important since Section 2-256(b) of the Baltimore County Code limits the filing of such a request to the legal owner of a property or his or her legally authorized representative.

Thank you in advance for your assurance that information will be forwarded to this office regarding the actual ownership of the property.

If there should be any questions or if I can provide additional information, please contact me.

Sincerely,

Jeffrey Long
Jeffrey Long

cc: William T. Hackett,
Chairman Board of Appeals
Arnold Jablon, Director
Zoning Administration and
Development Management

RECEIVED
SEP 17 1991
ZONING OFFICE



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 13, 1993

George A. Breschi, Esquire
DINENNA AND BRESCHI
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Case No. R-89-455
Engineers & Iron Workers - Petitioners

Dear Mr. Breschi:

The Board has completed an audit of pending cases before it and has located the above-referenced Petition for Reclassification, on which Eric DiNenna appeared as Counsel for Petitioner. This Petition was filed with the Board prior to the County Council's enactment of the 1992 Comprehensive Zoning Maps. In view of this subsequent enactment by the Council, this Petition for Reclassification of the subject property is moot. The Board will therefore withdraw this Petition from its docket of pending cases and close our file.

Please contact me within fifteen (15) days from the date of this letter if you have any questions or comments concerning the above action.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: Joseph G. Peeler, Jr., Vice President
Engineers & Iron Workers
David J. Preller, Esquire
Geraldine Klauber, Esquire
Mr. James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
James Thompson /ZADM
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Engineers & Iron Workers
NE/s Reisterstown Road 1150' NW of c/1
Rosewood Lane, Cor/NW/s Proposed Owings
Mills Boulevard
M.L.-I.M. to B.R.

#R-89-455
Item #5
Cycle I - 1989
4th E; 3rd C
10 acres

8/16/89 -Letter requesting postponement from S. Eric DiNenna, Counsel for Petitioner due to prior commitments.

8/17/89 -Letter to Mr. DiNenna DENYING postponement request; reclass has been advertised and notices sent; case must be heard within timeframe mandated by law.

10/03/89 -Letter from S. Eric DiNenna, Esq. -advising of intent to request continuance on the record (sitting as Master in Circuit Court); has copied PC and asked that any Protestants of which the Board or PC are aware be advised as well (he has not been contacted by any potential protestants).

10/11/89 -Continued on the record; no reset date; to be requested by Counsel.

9/17/91 - Following parties notified of hearing set for October 2, 1991 at 9:30 a.m. for the purpose of submitting an Amended Plan only:

S. Eric DiNenna, Esquire
David J. Preller, Esquire
Mr. James Earl Kraft
P. David Fields, Esq.
James E. Dyer, W. Carl Richards, Jr.,
Arnold Jablon, Public Services
Geraldine Klauber, Esquire
Engineers & Iron Workers
People's Counsel Lawrence E. Schmidt
Robert Haines, Timothy L. Kotroco,
Docket Clerk - Zoning,

9/25/91 -Letter dtd 9/24/91 from S. Eric DiNenna requesting postponement of matter set for 10/02/91 due to schedule conflict (sitting as Master that day); asking that matter be reset for purpose of submitting amended plan upon request of Petitioner.

9/25/91 -Notice of POSTPONEMENT sent to above; not to be reset until requested by Petitioner.

10/13/93 -Ltr to George Breschi, Esq. as Counsel for Petitioner -- E. DiNenna appeared as Counsel for Petitioner; advising Mr. Breschi that petition is now MOOT as result of enactment of 1992 Comp. Zoning Maps by County Council; Board will withdraw petition from docket and close file; allowing 15 days for comment/questions.

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.
GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.
P.O. BOX 10508
TOWSON, MARYLAND 21285-0508
SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-6884

August 15, 1989

County Board of Appeals
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: CR89455
Engineers & Iron Workers,
Petitioners

Dear Mr. Chairman:

I am in receipt of your notification to me concerning the above-captioned matter informing me that the hearing is set for October 11, 1989, at 10:00 a.m..

This is to advise you that I have prior commitments of court and would respectfully request a postponement of this matter.

I would ask that this matter be set in immediately thereafter on a future date.

I would ask your office to contact me so that a date may be set that is not in conflict with all schedules.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:cjc
cc: Mr. Jack Skipper
Phyllis Cole Friedman, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
AUG 16 AM 11:37

DINENNA AND BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.
FRANCIS X. BORGERDING, JR.
P.O. BOX 10508
TOWSON, MARYLAND 21285-0508
SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-6884

September 4, 1991

Mr. Jeffrey Long
Office of Planning
County Courts Building
Towson, Maryland 21204

RE: Property at Reisterstown Road
and Owings Mills Blvd.

Dear Mr. Long:

This is to confirm our conversation last week where you indicated the above-captioned matter is presently before the County Board of Appeals pursuant to Case No. R-89-455 and will be made an issue in the upcoming Comprehensive Zoning Map procedure by the Office of Planning and Zoning.

You indicated to me that the matter was already made an issue.

On Tuesday, September 3, 1991, you phoned me indicating concerns as to the ownership of the property and that if the ownership of the property is changed since the filing of the Petition, a fee might have to be paid.

This is to advise you that irrespective of the ownership of the property, the matter is still an issue as to land use and not necessarily as to ownership.

I am contacting my client relative to the actual ownership of the property and will advise you as soon as possible.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:cjc
cc: David Preller, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
SEP 17 PM 2:08

DINENNA AND BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.
FRANCIS X. BORGERDING, JR.
P.O. BOX 10508
TOWSON, MARYLAND 21285-0508
SUITE 600
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409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-6884

September 11, 1991

County Board of Appeals
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: R-89-455

Dear Mr. Chairman:

As you recall, the above-captioned matter was continued generally pending a request for a hearing to be filed by the property owner.

Please be advised that the present property owner is now the Eastern Land and Resource Corporation and that the owner wishes to have this matter now heard before the County Board of Appeals for purposes of submitting a documented site plan, therefore, amending the original Petition filed herein.

Some question has been raised as to the property owner and as this Board is well aware and the zoning regulations have to do with the use of the property and not the ownership of the property.

Accordingly, please set this matter in for a hearing for the purpose of submitting an amended site plan.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:bjk
cc: Mr. Richard Woodfin
Mr. David Fields

RECEIVED
COUNTY BOARD OF APPEALS
SEP 12 AM 11:03

Wed 9/10/91 @ 9:50 (2)

DINENNA AND BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.
FRANCIS X. BORGERDING, JR.
P.O. BOX 10508
TOWSON, MARYLAND 21285-0508
SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-6884

September 24, 1991

County Board of Appeals
of Baltimore County
County Office Building, Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: R-89-455
Petitioners: Engineers & Iron
Workers

Dear Mr. Chairman:

I am in receipt of your notification of a hearing date for the purpose of submitting an Amended Petition concerning the above-captioned matter and set for October 2, 1991 at 9:30 A.M.

I must respectfully request a postponement of that date and time due to the fact that I am sitting as a Master in the Circuit Court for Baltimore County at that exact time and date.

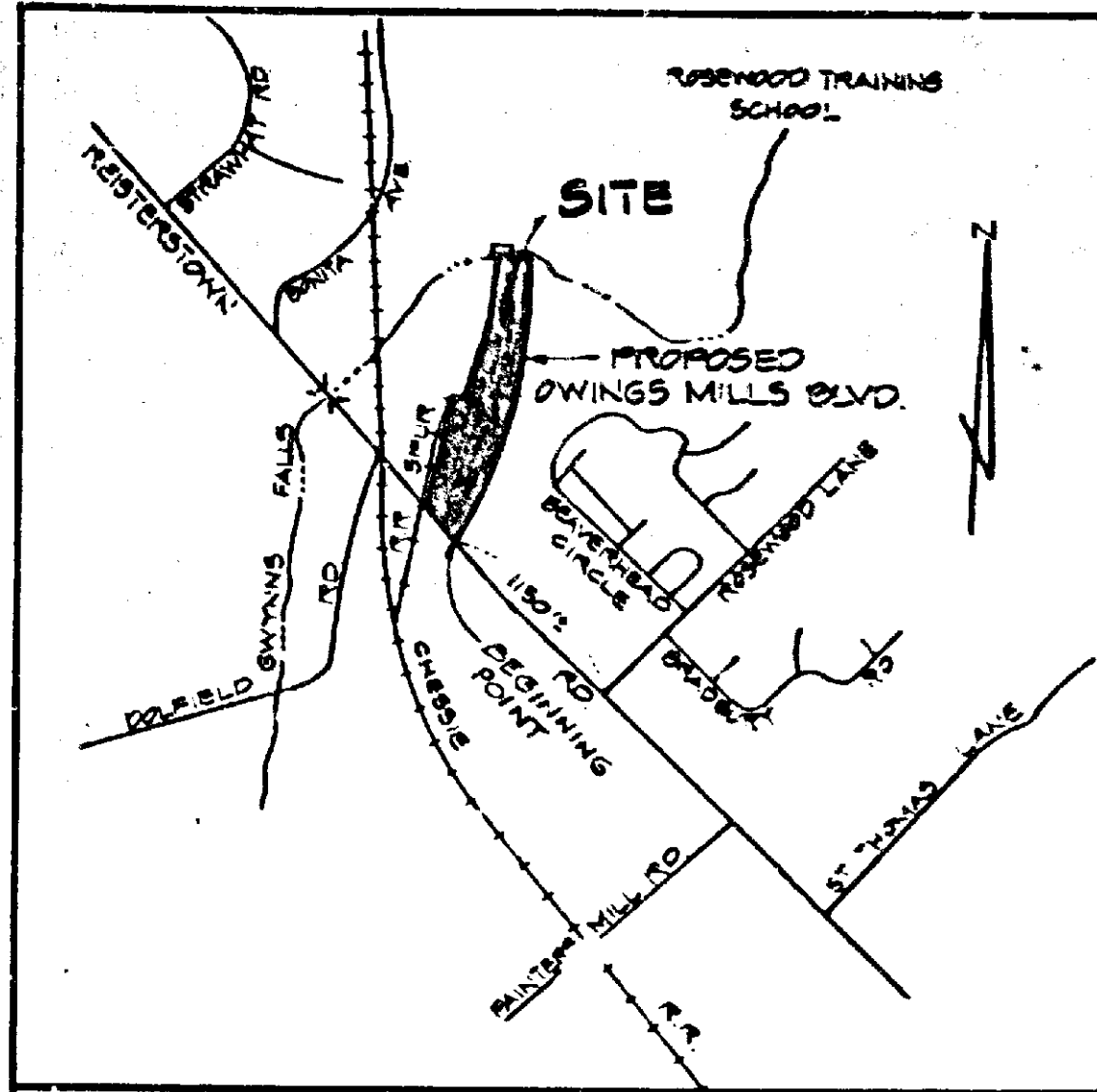
I would respectfully request that this matter not be set in until such time as requested by the Petitioner through this office. I appreciate your cooperation.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

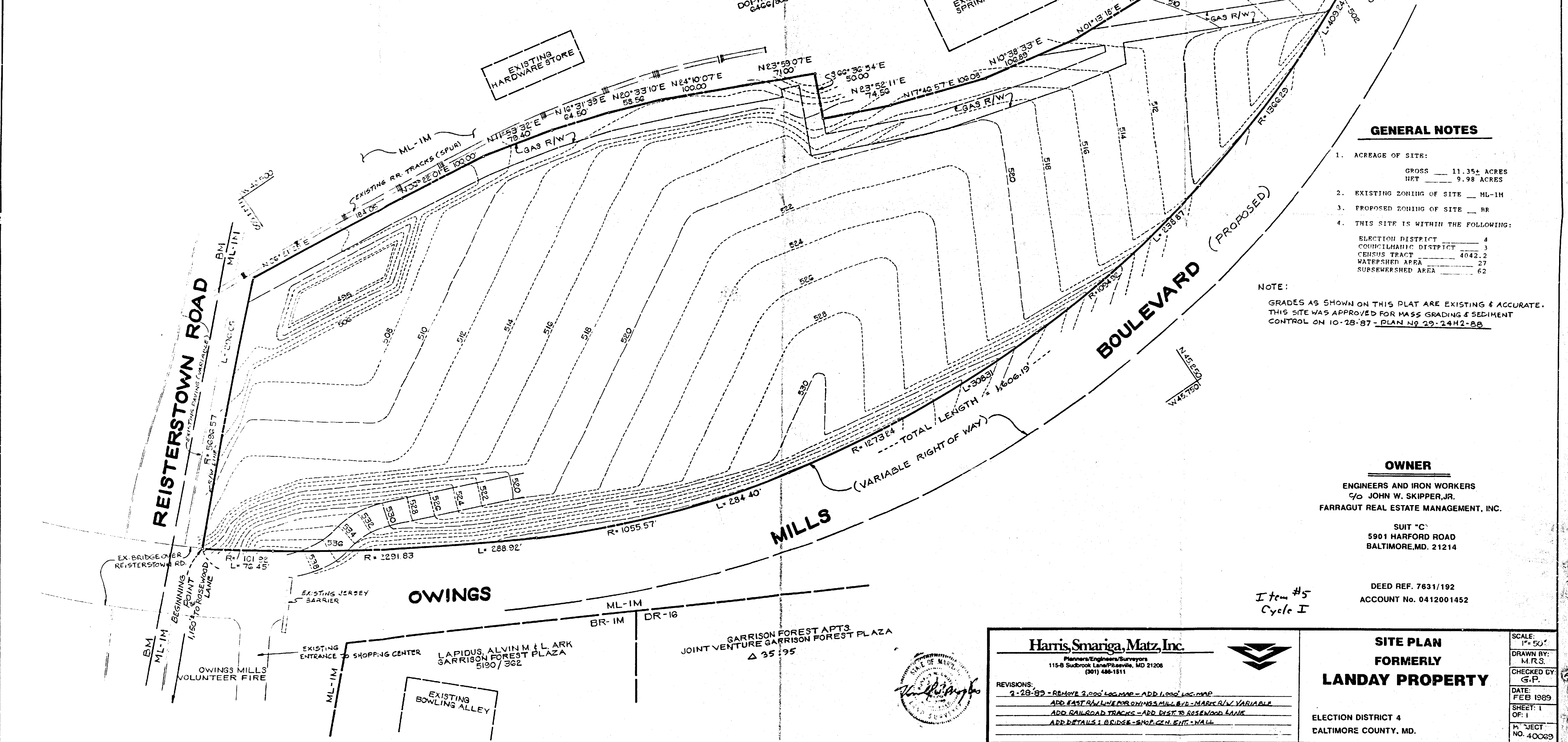
SED:bjk
cc: People's Counsel for Baltimore County
Mr. Richard Woodfin

RECEIVED
COUNTY BOARD OF APPEALS
SEP 25 AM 11:33



LOCATION MAP
SCALE: 1" = 1000'

SCALE: 1" = 1000'



F & S Limited Partnership
S/S W. Chesapeake Ave., 95' E of c/1
Florida Ave. (307 W. Chesapeake Ave.)
D.R.5.5 to R.O.

#R-89-459, Item #9, Cycle I - 1989
9th Election District
4th Councilmanic District

March 1, 1989 Petition filed for reclassification of subject property from D.R. 5.5 to R.O. by Harry S. Shapiro, Esq. on behalf of Petitioner.
November 15 Hearing before the Board (HEB).
December 1 Memorandum of Law submitted by John C. Murphy, Esquire on behalf of Southland Hills Impr. Assoc., et al, Protestants.
December 5 Memorandum of Petitioner, F & S Ltd. Partnership submitted by Harry S. Shapiro, Esquire.
January 1, 1990 Planning Board Comments and attached source material received.
February 14 Opinion and Order of the Board GRANTING the reclassification.
March 15 ✓ Order for Appeal and accompanying Petition filed in CCT,BCO by John C. Murphy, Esquire on behalf of Protestants.
March 16 Certificate of Notice sent.
March 21, 1990 ✓ Transcript of testimony filed; Record of Proceedings filed.
March 21, 1990 ✓ Order for Appeal and Petition filed in CCT,BCo by People's Counsel.
March 21, 1990 Certificate of Notice sent.
April 12 ✓ Transcript of testimony filed; Record of Proceedings filed.
September 24 ✓ Order of the CCT,BCO REVER AG Board of Appeals (Murphy).
October 15 ✓ F & S Ltd. Part. Notice of Appeal to the Court of Special Appeals filed.
August 15, 1991 ✓ Court of Special Appeals Order issued AFFIRMING CCT,BCo which REVERSED C.B. of A.
September 3 ✓ Motion for Reconsideration filed in CCT,BCo by Harry S. Shapiro, Esquire for F & S Ltd. Part.
September 12 ✓ Motion DENIED by Court of Special Appeals.



Court of Special Appeals
Courts of Appeal Building
Annapolis, Md. 21401-1699
(301) 874-3646
WASHINGTON AREA (301) 261-2920

SUSAN L. ROSENBLUM
CLERK DEPUTY

September 12, 1991

Harry S. Shapiro, Esquire
400 West Pennsylvania Avenue
Towson, Maryland 21204

Re: F & S Limited Partnership vs. People's Counsel
for Baltimore County et al.
No. 1619, September Term, 1990

Dear Mr. Shapiro:

Be advised that by Order of this Court dated September 11, 1991, Appellant's Motion for Reconsideration of the Court's per curiam opinion filed on August 5, 1991 was denied. The mandate of the Court, which issued today, is enclosed.

Very truly yours,

Leslie D. Gradet
Leslie D. Gradet
Clerk

LDG:ls

Enclosure

cc: Peter Max Zimmerman, Esquire
Phyllis Cole Friedman, Esquire
John C. Murphy, Esquire
Arnold Jablon, Esquire

TTY FOR DEAF:
BALTO ANNAPOLIS AREA (301) 874-3646
WASHINGTON AREA (301) 565-0450

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

F & S LIMITED PARTNERSHIP
Appellant
vs. September Term, 1990
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, et al. No. 1619
Appellee

MOTION FOR RECONSIDERATION

The Motion for Reconsideration of the Appellant herein, F & S. Limited Partnership, by Harry S. Shapiro, its attorney, respectfully represents:

1. On August 5, 1991, this Honorable Court filed a Per Curiam Opinion in the above captioned proceeding.
2. Although the Appellant realizes that this Honorable Court read the briefs in this matter, and heard the oral argument, the Appellant sincerely believes that a reconsideration of the issues are in order in this case for the reasons that shall be set forth herein.
3. Question number 1, of the Appellant as set forth in its brief related to the question pertaining to whether or not there were any appropriate parties who had filed their appeal from the Board of Appeals for Baltimore County to the Circuit Court for Baltimore County. This issue is controlled by statute and case law which we believe to be completely controlling in this case. There appears to be no question

Transcript of the Record with reference to the issues under the Motion to Dismiss as well as the issues under the Decision on the Appeal generally. Only docket entries were produced, and these docket entries were filed with this Court. Additionally, the Appellees never produced any record to establish that there was any evidence before the Circuit Court to warrant the Appellees being considered as appropriate parties before the Circuit Court, or before this Honorable Court. On page 13 of the Opinion of this Court, the Court stated that the Appellant had difficulties in that no Transcript was made of the hearing before Judge Brennan, and nothing with respect to that hearing is in the Record Extract presented to us. However, we believe that this Court was in error in assuming that the Appellant herein had the burden of proof to establish that the Appellees were not parties. We believe that this viewpoint is contrary to Maryland law which clearly established that the Appellees had the burden of establishing that they were proper parties for the appeal not only before the Circuit Court, but before this Honorable Court. Article 66B, Section 4.08 of the Annotated Code of Maryland (1988 Replacement Volume) clearly creates guidelines which places a burden of proof upon a person who feels aggrieved by a zoning decision to file an appeal to the Circuit Court for Baltimore County. This statute has been construed by numerous cases which continue to establish that the burden is upon the Appellant to the Circuit Court to establish that such person was a taxpayer and that such

person was aggrieved in accordance with the requirements of the statute and case law. The theory of Ginn v. Farley, 43 Md. App. 219, 403 A.2d 858, clearly established the burden upon the Appellees in this case. See also Southland Hills Improvement Association v. Raine, 220 Md. 213, 151 A.2d 734. In summary, on the issues relating to the Motion to Dismiss filed by the Appellant before the Circuit Court, we respectfully believe and aver that the Appellant here was entitled to the protection of the law not only before the Circuit Court but before this Honorable Court in that the burden of proof should not have shifted to the Appellant to establish that the Appellees were not appropriate parties. Additionally, there is an appropriate remedy that this Court could follow at this time in order to establish justice in this case which we will discuss at the conclusion herein after we discuss other issues raised in this Appeal and in this Motion.

4. The second issue which we would request that this Honorable Court reconsider is the issue relating to errors by the County Council in zoning issues relating to property directly across the street from the subject property (the Church property) and property directly adjacent to the subject property (Chesapeake Building). On page 10 of this Court's Opinion, the Court discussed the Circuit Court's views of the significance to the commercial parking lot on the Church property across the street from the subject property. In discussing this issue, this Honorable Court appeared to indicate that this was an old issue which was

merely warmed over. On Page 11 of this Court's Opinion, this Court stated that the County Council undertook its comprehensive zoning in 1988 with the knowledge that there was a special exception granted by the Board of Appeals for the commercial parking lot at the Church property. However, the issue of whether or not the Church had a legal commercial parking lot under the special exception was clearly raised by the Appellant before the Circuit Court and in the Appellant's Brief before this Honorable Court. We clearly attempted to point out that Baltimore County law does not allow a commercial parking lot under a special exception classification. Therefore, the County Council clearly was in error in ignoring the illegal zoning at the Church parking lot, or in failing to take it under proper consideration if it knew that such illegal zoning was in fact present. On page 5 of the Appellant's Brief, the Appellant clearly pointed out that B-L Zoning is required under Section 230 of the Zoning Regulations of Baltimore County before there could have been a commercial parking lot at the Church property. On page 21 of the Appellant's Brief, the Appellant referred to the testimony of one of its experts, Mr. Bernard Willemain, who testified that the Church was granted the right to have a commercial parking lot without the B-L Zoning which was necessary for a commercial parking lot. In other words, the special exception granted to the Church was illegal and constituted error on the part of the County Council. This testimony was clearly before the Board of

that the burden is upon the Appellants from the Board of Appeals (Appellee's herein) to establish that they were proper parties before the Circuit Court. This burden of proof element is not only prevalent at the Circuit Court level, but this burden of proof continues upon the Appellees to the Court of Special Appeals. However, we believe that this Honorable Court took the position that the burden was upon the Appellant here to establish that the Appellees were not appropriate parties. There is no law that we have been able to discover which calls for any shifting of the burden of proof from what prevails in the Circuit Court to what prevails at the Court of Special Appeals level after an appeal from the Circuit Court case. The Appellees never established any record to indicate that they were parties in the Board of Appeals except for the People's Counsel who was definitely a party. However, People's Counsel did not file any appeal to the Circuit Court for Baltimore County until after the 30 day period for Appeals as required by the Maryland Rules. Therefore, unless there were appropriate Appellants who had filed an appeal from the Board of Appeals to the Circuit Court within the 30 day period, then the Appeal of the People's Counsel was moot. We believe that the law applicable to the issues being explained herein are clearly established in the Appellant's Brief. In argument, this Court inquired as to whether or not there was any record (other than docket entries) on the hearing on the Motion to Dismiss before the Circuit Court, but the elements in this case are quite clear that the Appellant had requested a

Appeals, was never discussed by Judge Murphy in the Circuit Court, and we believe was erroneously touched upon by this Honorable Court in its Opinion.

5. Another issue that was similar to the "illegal parking lot" was the issue discussed on page 22 of the Appellant's Brief in the testimony of another expert for the Appellant, namely Mr. Frederick P. Klaus, who also testified with reference to the lack of the B-L Zoning for the Church commercial parking lot, and he further confirmed that there was an error on the zoning line between the Chesapeake Building and the adjacent subject property which zoning line was in violation of the side yard restrictions of the zoning laws of Baltimore County. We respectfully allege that if the County Council knew that the aforesaid zoning line was in conflict with the zoning regulations of Baltimore County, or if the County Council failed to take same under consideration, then it was a clear error on the part of the County Council in either case. This issue was never discussed by the Circuit Court, and was not touched upon in this Honorable Court's Opinion.

6. The Appellant discussed at great length before the Circuit Court, and in its Brief before this Honorable Court, the issue relating to zoning by plebiscite which was clearly established by the evidence. Testimony before the Board of Appeals clearly established that the County Council person for the district in question established zoning for the subject property solely in accordance with the direct requests of some of such County Council person's

In our view, and in the view of the experts produced by the Petitioner, there is no property in Baltimore County that has been subjected to more erroneous zoning than the subject property. We respectfully submit that the strong evidence produced in this case, and the strong testimony through the experts of your Petitioner, clearly established errors in the adoption of the Land Use Map of 1988. These errors can be summarized (without any order of importance) as follows:

1. Improper consideration of B.L. Zoning Uses for commercial parking lot directly across from the subject property constituting an error in the consideration of the Map.
2. Error in the Zoning Line between the subject property and 305 West Chesapeake Avenue (Chesapeake Building) creating commercial use by the Chesapeake Building on D.R. 5.5 property.
3. Councilmanic courtesy utilized by County Councilperson for district in question which constituted an illegal procedure creating an error in the Map.
4. Adoption of Southland Hills Line by the Southland Hills Association which was adopted by Baltimore County constituting zoning by plebiscite which has been determined by the Court of Appeals of Maryland as zoning error.
5. County admission that the 1988 Land Use Plan was supported by the 1979 Towson Plan (now obsolete by subsequent changes in the District in question) which was prior to the adoption of the R-O statute in Baltimore County. Additionally, the County admitted that it used a "Towson Plan"

which had not passed the procedures for adoption through the Planning Board of Baltimore County and through the County Council which action constituted erroneous procedures in the adoption of the Map.

6. County Council failed to consider, or refused to consider, the impact on the subject property which was described by Petitioner's experts as the only property of its kind with such a commercial impact and without any buffer.

7. County Council failed to consider trends of commercial impact in the first block from Bosley Avenue in an arbitrary and capricious fashion in order to satisfy a minority position in the community.

8. Councilperson from district by admissions, actions, and deeds has attempted to freeze the zoning uses on the subject property contrary to statutes, procedures, and Maryland case law.

9. In connection with the commercial parking lot at the church property, the D.R. Zones as set forth under Section 1B01 of the Zoning Regulations of Baltimore County do not allow for a commercial parking lot. Although residential property may be utilized for parking with a special exception, said parking is limited to church use. In the case at bar, the evidence was clear that charges were made by the Church for parking use other than for church purposes. This requires a B.L. Zone as Section 230 of the Zoning Regulations for Baltimore County sets forth the use regulations in the Business Local Zone. If the County Council would have

properly considered the requirements at the area in question, they could have properly zoned the church property and properly zoned the subject property.

10. In connection with the error in the Zoning Line between the Chesapeake Building and the subject property, an appropriate consideration of the area by the County Council should have allowed for appropriate uses for both properties.

The witnesses for the Petitioner clearly indicated that councilmanic courtesy was practiced in connection with the Land Use Map of 1988. Although the Chairman of the Board of Appeals attempted to halt additional testimony relating to the issue, the Chairman recognized clearly in the record that Councilmanic courtesy is clearly practiced. This constitutes an erroneous delegation of the responsibility of the County Council to consider and to enact a comprehensive Land Use Map. The fact that the Council as a whole might have voted on issues in every District does not compensate, nor does it relieve, the Council's responsibility to exercise independent judgment. The procedure of rubber stamping the District person's Motions is erroneous under Maryland law. In the District in question, it is well recognized that Barbara Bachur determines the zoning for her district. In the review in the Towson Times of November 22, 1989 concerning the hearing in this case, Ms. Bachur was quoted as saying as follows:

"This case, Bachur said, was decided on community impact. 'Communities deserve every bit of protection they can get,' said Bachur."

She added that any future zoning change would have to come with community support. This statement merely confirmed the testimony of the witnesses in this case that zoning by plebiscite was practiced upon the subject property which procedure clearly constitutes error under Maryland law.

The report from the Planning Office sent to the Board of Appeals prior to the Hearing was improper under Section 2.58.1 of the Baltimore County Code before the representative for the Petitioner had an opportunity to review same and pre-empted the right to object in accordance with the said law. Finally, the said report was introduced over the objection of the Petitioner. Although the said exhibit attempted to take matters out of context from proceedings leading to the adoption of the Land Use Map of 1988 for the Fourth Councilmanic District, the said exhibit confirmed the adoption by Ms. Bachur of the alleged community's desires. This attempt to produce testimony out of context, and without any attempt to include testimony by anyone in favor of the R-O Zoning for the subject property, constituted a biased as well as an arbitrary and capricious attempt to take sides in the controversy rather than present unbiased facts that might be considered by the Board of Appeals. Notwithstanding this approach, the said so called "brief" of the County representative, Mrs. Itter, contained the following statement from someone representing the Southland Hills Improvement Association which was as follows:

"Mrs. Bachur has been very sensitive to our community's needs, and we look forward to her

continued sensitivity, and we look forward to the Board's support of the rather, the council's support of the Board's recommendation."

The exhibit further indicated how the councilmanic courtesy of the council is practiced, and indicates actions by Ms. Bachur in deciding on certain issues, including issue 4-001 involving the subject property, without any input from any other member from the County Council.

Additionally, this exhibit further indicates that issue number 4-001 involving your Petitioner was determined for DR 5.5 Zoning based on a "Towson Plan" when Ms. Itter testified in the within case that the so called "Towson Plan" was not a valid document. The use of an invalid document to support what is supposed to be an objective Land Use determination constitutes error in this case.

We do not believe that anyone can quarrel with the testimony of the experts for your Petitioner when they stated that any Zoning other R-O Zoning for the subject property would be in error. The commercial impact on the subject property can not be debated. Section 203 of the Zoning Regulations of Baltimore County defines the R-O Zone as if it were written for the subject property as the Legislative Policy clearly indicates that the R-O Zoning was designed to accommodate houses impacted by commercial activity. To deny the heavy commercial impact on the subject property, and to deny the changes in trends in the Towson area in the immediate vicinity of the Court House, would be an arbitrary and capricious application of the appropriate R-O Zoning constituting error in the Land Use Map of 1988.

In the case of Mayor and Council of Rockville vs. Cotler 230 Md. 335, 187 A.2d 94, the Court of Appeals of Maryland, under Chief Judge Brune, stated the law of Maryland on the issue of whether or not a zoning decision may be based upon plebiscite of neighbors. The Court found that elements of the prior zoning decision was based upon a plebiscite of neighbors which the Court stated would not be permissible. The Court went on to further state that it was also not permissible to create a no man's land or buffer zone in property of the Appellees in said case for the benefit of others by preventing the Appellees from using their property for any of the purposes for which it is peculiarly suitable.

In the case of Hedin vs. Board of County Commissioners, 209 Md. 224, 120 A.2d 663, the Court of Appeals of Maryland made some classic statements which completely fit the case at bar when the Court stated as follows:

"We think that there was not sufficient evidence to warrant the conclusion of the Board in the instant case, and that the Board's action in basing its decision apparently almost entirely upon the personal opinion of one of its members, without support for that opinion in the evidence, amounted to arbitrary action on the part of the Board from which some form of relief may be had in equity hence, the decree of the Circuit Court will be reversed and the case remanded."

In this case the reference to the Board related to the County Commissioners of Prince George's County which had adopted the zoning in question in an arbitrary and capricious manner on one member's personal opinion without the support of evidence. This theory enunciated by the Court of Appeals is completely applicable in this case where Ms. Bachur through

the councilmanic courtesy delegated to her had arbitrarily adopted the zoning line requested by Southland Hills Improvement Association in this case. The testimony of the representatives from the Association as well as the County Representative, Diane Itter, is clearly analogous with the Hedin case.

In the case of Benner vs. Tribbitt, 190 Md. 5, 57 A.2d 346, the Court of Appeals of Maryland wrote a classic opinion concerning the exercise of police power as in the case of the granting of a permit, license or zoning. The Court stated as follows:

"On purely public or political questions regarding exercise of the police power, e.g., regulation or prohibition of liquor traffic or race-track betting or passage of general, traffic or zoning laws, legislators may follow the wishes of their constituents. Such action is not subject to judicial review. But in restraining individual rights by exercise of the police power neither a municipal corporation nor the state legislature itself can deprive an individual of property rights by plebiscite of neighbors or for their benefit. Such action is arbitrary and unlawful, i.e., contrary to Art. 23 of the Declaration of Rights and beyond the delegated power of the town of Denton to pass reasonable ordinances."

"There is no magic in the word 'zoning', but there is a wide difference between exercise of the police power in accordance with a comprehensive zoning plan, which imposes mutual restrictions and confers mutual benefits on property owners, and arbitrary permission to A and prohibition to B to use their own property, at the pleasure of neighbors or at the whim of legislative or administrative agencies."

Although Ms. Itter stated that the Southland Hills Association determines the zoning for its area, the testimony was doubtful that the community even was against the R-O

Zoning on the subject property at this time. A representative for the Association testified that out of the 210 residents polled concerning whether or not they were opposed to the R-O issue pertaining to this property, only 63 supported the opposition in this case. This represents a minority view even supporting the protestors in this case. It is also important to point out that the said witness testified that there are 309 families in Southland Hills and only 160 are members of the Association. When you compare the vote of 63 against the number of residents in the defined area, the support for the protesting position pales. It is also interesting to point out that some of the witnesses presented in protest were witnesses who resided in an area in West Towson where the R-O zone has extended to Highland Avenue which is much farther to the west of the subject property, and R-O conversions have proved to be good for the area.

Assuming arguendo that a majority of the people in the so-called Southland Hills boundary lines were against the R-O Zoning for the subject property, or the Southland Hills Association was able to dictate the zoning lines (which it did in this case), this would constitute zoning by plebiscite. The Court of Appeals of Maryland in the case of Mayor and Council of Rockville, Supra, clearly stated that a zoning decision may not be based upon plebiscite of neighbors of property which owners seek to rezone. This court stated clearly as follows:

"Here we think that the action of the City which purported to be and, we think, was rezoning